

Name _____

Judicial Review

The power of the Supreme Court to interpret the law comes from the Constitution. Article III, Section 2 says, "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." This power is called judicial review, meaning that the Judicial Branch can review laws and decide if they agree with the Constitution.

The Supreme Court itself strengthened this power under Chief Justice John Marshall in its 1803 ruling in the case of *Marbury vs. Madison*. The decision in that case said that a portion of the Judiciary Act of 1789 was unconstitutional. Congress honored this decision and changed the law. It wasn't until 1857 in the *Dred Scott vs. Sanford* case that the Supreme Court declared a second law unconstitutional.

How does the Supreme Court make sure that the executive and legislative branches act on its decisions? That is a problem when the judicial branch cannot enforce its opinions, because it does not have control of the military like the President and does not have control over the nation's money like Congress. One answer is that the Constitution and precedent (earlier decisions and behavior) encourage the other branches of the federal government to pay attention to the Supreme Court. The Constitution says the Supreme Court has this power; and, for more than 200 years, the government has respected and acted on the Court's rulings. A second answer is that either of the other two branches could join with the Supreme Court to help enforce its decisions. Finally, Supreme Court justices are in office for life, which means that people in the other branches who oppose Court decisions will be out of office before the justices are. The Court can outwait the other two branches and get its point accepted later.

Strong Supreme Courts

At various times in U.S. history, one branch of the government has dominated the other two. There are at least three eras during which the judicial branch has been very strong.

Chief Justice John Marshall and his Supreme Court had a great impact on the development of the national government from 1801-1835. The Court's decision in *Marbury vs. Madison* has already been mentioned as the test case that established the power of judicial review. Other cases gradually began to give the national government more power than the states, showing that the constitutional government was not going to allow the problems that had existed under the Articles of Confederation.

The Great Depression and Franklin D. Roosevelt's New Deal set the stage for a power struggle between the President and the Supreme Court. Roosevelt tried many new ideas, passed into law by Congress, to try to solve the economic problems of the Depression. The Supreme Court declared several of these programs unconstitutional and tried Roosevelt's patience so much that he tried to "pack" the Court with his own appointees in order to get more favorable rulings.

The Supreme Court had a profound impact on U.S. laws and society under Earl Warren, Chief Justice from 1953-1969. Among the rulings during this time that literally changed American life were those on integration of public schools, the one-man-one-vote decision on representation in Congress, and several cases, such as *Miranda* and *Escobedo*, on the rights of accused persons.